

Mr Grant Harrison,
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Mr Harrison

Submission to the WTO Inquiry

1. The terms of reference of your inquiry give rise to a threshold consideration: is this the appropriate parliamentary committee to undertake an inquiry of this nature? I think the joint committee on Foreign Affairs and Trade is the proper oversight body. I take that view because:
 - The World Trade Organisation - which is a continuation of the General Agreement on Tariffs and Trade (GATT) – was established at Bretton Woods in 1947 and therefore is a long standing international agency. Your inquiry's terms of reference, by and large, amount to an examination of how well that agency functions. This seems to me to be outside of the terms of your Resolution of Appointment.
 - None of your terms of reference go to the purpose of the WTO, its goals and objectives or reasons for Australia deciding initially to become a foundation contracting party to the GATT. If this were your line of approach it may be within your Resolution of Appointment. Alternatively, if any treaties or international instruments were being proposed as a consequence of negotiations within the WTO that too would appear to be within the terms of your Resolution of Appointment.
 - On the other hand the Resolution of Appointment for the Joint Standing Committee on Foreign Affairs, Defence and Trade does appear to encompass the issue of monitoring the role of established international organisations with which Australia is affiliated. Their review of the UN is a case in point.
 - None of your terms of reference go directly to the mainstream issues with which the WTO is concerned. (Although, of course,

transparency and accountability are fundamental issues in all organisations). Nor do they seek to assess how effective the WTO is on delivering on its core objectives. From that point of view they appear slanted to raising a number of matters avidly argued by some NGOs which at times contradict or misunderstand the purpose of the agency.

2. Notwithstanding my reservations about the appropriateness of the Treaties Committee conducting a narrow inquiry into some aspects of the WTO's work I make the following submission.
3. By way of introduction I refer to a speech on the topic "Trade and Labour – Competing or Complementary Interests?", delivered on 18th June, 2000, to the Australian APEC Study Centre, wherein I said the following -

"What worries me about this issue is some of the populist solutions that are being publicly canvassed. There is a distinct globophobic tinge to the rhetoric. Hailing the collapse of the talks in Seattle as a "victory" seems contradictory to me. Many of the fears expressed about the economic, technological, cultural and political changes that get lumped together as "globalisation" **will be alleviated if a new WTO Round gets under way.**

The slogan, "No, no to the WTO" also seems odd. The GATT and its successor, the WTO, were established after the Second World War to create an international rules based trading system. Prior to the creation of this system, bad trade disputes lead to war. **This is a terrifying option in a nuclear world.**

An important element of the WTO structure is that economic dominance is not what determines the outcome of a trade dispute. **The rules place an emphasis on merit not on might to settle disagreements.**

This must surely benefit Australia – a middle league international economy that needs a multilateral system to survive. Criticisms of the WTO would be better focused if they proposed how the system could be improved to ensure that all of the 136 member countries **had access to sufficient resources to exercise their rights and obligations"**.

4. It is worth remembering that the WTO's purpose is to create a forum for nations who voluntarily embrace the objectives of economic growth and open markets to negotiate commitments to freer trade between themselves, register those agreements with a central authority clothed with the power to decide whether breaches of agreed rules have occurred or to interpret the meaning of the agreements, and obtain compliance.
5. As a consequence the WTO's role is to create a negotiating venue which settles international rules governing permissible conduct in trade and a dispute settling mechanism to enforce those rules. By international standards the WTO itself is quite a small organisation with a tiny budget.

What gives it its strength is the 136 member countries (known as contracting parties) and the agreements **they** reach on trade

6. Many of the complaints and demands raised about the WTO relate to its dispute settling mechanism. The WTO is alone among the international agencies and organisations in having a binding and enforceable method of settling disputes between its members. This is its fundamental strength. However, losers from the process criticise the WTO and label it as invading national sovereignty. Single issue international lobby groups looking for a mechanism to enforce their views, criticise it for not including them properly. What complicates this debate is that often the issues that the WTO is chastised for neglecting, or not handling well enough, while laudable in themselves, are mainly matters for sovereign governments or other international agencies.
7. It is also worth noting that decision making in the WTO is consensus based. Some of the criticism it endures reflects the frustration and impatience of NGOs at the delays this involves. To a greater or lesser extent these frustrations are shared by all member countries, but are most vexed when it comes to the WTO's core agenda of trade liberalisation.
8. What balances these considerations is the massive economic good that the WTO has assisted in achieving. As I said in my APEC speech cited above:

“A first freedom is freedom from want, an economic right – without it other freedoms are meaningless. What the critics overlook is that economic growth in East Asia over recent decades has lifted 150 Million men, women and children out of absolute poverty. The proportion of people who go to bed hungry has measurably fallen. The lowering of barriers to intra-regional trade and access to the markets of leading economies was one of the drivers of this sea-change.

Clare Short* is right. Free trade is necessary. She is also correct to emphasise that it is not sufficient. The plight of the underprivileged can be alleviated even faster if the national wealth accumulated by open markets is distributed within economies more equitably. Greater democracy, democratic institution building and fundamental rights of citizens with sufficient economic freedom to exercise them are key issues too”.

*Clare Short is Tony Blair's Secretary of State for International Development and had been quoted earlier in the speech.

9. On 1st August, 2000, the ALP, at its National Conference in Hobart, adopted a new trade policy. This policy continues the same themes on trade that Labor has pursued through the 80s and 90s. The relevant parts of this policy, for your inquiry, are quoted below.
- “7. Labor remains firmly committed to realising our free trade objectives through negotiations at the World Trade Organisation (WTO) and the Asia Pacific Economic Cooperation (APEC) Forum, regional free trade agreements and bilateral market opening.”
- “8. The WTO’s objective – to reduce trade barriers worldwide – will help Australia maximise economic growth and job creation. Labor endorses the full implementation of the WTO’s Uruguay Round Agreements We call for the commencement of a new round of WTO negotiations, to start as soon as possible, be as comprehensive as possible and include agriculture. Such a round would also deal constructively with boosting growth in developing countries, as well as proper competition and investment policy to prevent the unfair use of market power in the global economy”.
- “9. WTO rules presently allow all nations to determine for themselves the appropriate public/private mix in their health, education and welfare sectors. WTO rules also permit countries to protect their cultural industries. Labor supports both these positions. We will vigorously oppose any proposal that would require Australia to privatise its health, education and welfare sectors, or which would require us to remove protection of our cultural industries”.
- “10. Labor is committed to the peaceful resolution of trade disputes in the WTO, through a system of transparent, fair and enforceable rules. We support efforts to make the WTO dispute resolution process as fair, prompt and as open as possible. Labor will make sufficient resources available to ensure that Australia can properly prosecute and defend those cases in which it is involved”.
- “15. Labor believes that consistent with its Singapore Declaration there is an obligation on the WTO to consider the impact of trade on core labour standards. Consequently we support, as a first step, the establishment of a formal WTO working group or a similar group with the following terms of references. Note: these are attached”.
- “16. Labor is opposed to the manipulation of core labour standards as a new form of protectionism”
- “17. Labor will support calls for a meeting between the WTO, ILO, World Bank, International Monetary Fund (IMF) and other relative bodies, as may be decided, for the purpose of launching ongoing dialogue and action on the subjects of development and labour standards”.

“18. Labor notes that the WTO (in its preamble) and APEC (through successive Leaders’ statements) are committed to furthering the goal of sustainable development. A Labor government will play an active role in WTO and APEC negotiations to promote sustainable development. In particular, Labor will work towards the removal of environmentally damaging subsidies, and promote mechanisms which can reconcile the interests of environmental protection and trade liberalisation. A Labor government will also ensure that all major trade agreements into which Australia enters – bilateral and multilateral – are assessed to ensure that they are consistent with the principles of sustainable development and environmental protection”.

“20. Developing countries must be properly resourced if they are to fully benefit from WTO negotiations. Labor will work to ensure that international funds are made available for capacity building and technical assistance, so that poorer countries can properly participate in WTO negotiations”.

“21. Governments have a responsibility to make policy making as transparent and publicly accessible as possible. A free flow of information is important for its own sake, as well as to maintain accountability and public confidence in the multilateral trading system. Labor will encourage this by:

- Ensuring that the positions that a Labor government takes to the WTO and developments within the WTO are regularly reported to the parliament, including to a joint parliamentary committee established to scrutinise WTO affairs;
- Ensuring that all Australian submissions and relevant materials to the WTO are made public unless there are genuine commercial-in-confidence reasons, or disclosure will damage our national interest;
- Reviewing all existing government consultative mechanisms and reconstituting them to ensure they are representative of business, unions, environmental and community interests; and
- Advancing rule changes within the WTO to ensure immediate publication of dispute settlement decisions, together with a short, plain language explanation of the decision”.

10. Comments on specific terms of reference.

Term of Reference

- Opportunities for community involvement in developing Australia’s negotiating positions on matters before the WTO.

Comment -

- Labor's policy commits us to reviewing the existing mechanisms for consultation to ensure that they are as representative and open as possible.
- We believe that before WTO ministerials an active and representative program of public consultations should be engaged in.
- We believe that the government, prior to proceeding to a WTO ministerial should announce the approach it intends to take.
- Labor's policy commits us to setting up a joint parliamentary committee to oversee the government and the WTO. This committee should also be used for consultation by holding periodic hearings on WTO issues.

Term of Reference

- The transparency and accountability of WTO operations and decision making.

Comment –

- The WTO is accountable to its member states. Those governments, in turn, are accountable to their parliament and people. Labor will exercise this accountability through its advisory and consultative mechanisms and through a joint parliamentary committee.
- Transparency in the WTO is another matter. Much can be done to make the WTO a more transparent body. Please note Labor Party policy paragraph 9 of this submission, policy point 21.
- While we believe that private negotiating sessions, by their nature, cannot be open, the dispute settlement procedure can be.
- Currently the WTO Secretariat issues a plain language explanation of decisions on appeal arising from the disputes process, however, these are background papers, not for attribution and not the property of the adjudicators. Labor supports a requirement that the disputes panel issue its decision with its own plain language synopsis.

- Currently, there is a considerable delay between the making of a decision in the disputes process and the publishing of a decision. This delay can be up to three months. The reason given for this delay is that the decision needs to be legally translated into all the international languages of the WTO. Labor supports the WTO having the resources to publish decisions immediately, in primary language of the appellant court, accompanied, at the same time, by legally correct international language versions.

Term of Reference

- Effectiveness of WTO settlement procedures and access to these procedures.

Comment:

- Dispute settlement is becoming increasingly litigious – a trend lead by the Americans – and arguments are increasingly technical. WTO jurisprudence is rapidly creating a whole new area of international law. This represents a shift from mediated and negotiated settlement as the predominant form of resolving disputes to technical argument and legal artifice. This trend should be discouraged, particularly because this tendency, if carried to its ultimate conclusion, will undermine commitment to the process, particularly by developing countries who almost always find themselves out-gunned legally.
- There is no difficulty about ease of access to the dispute settling process by countries who are affected. The ease of access argument arises from NGOs demanding to put their point of view. Who are these NGOs, to whom are they accountable, how relevant to the issues in dispute are their interests, are all fair questions. Lately some NGOs have claimed they wish to submit amicus briefs. That raises the further question, are they genuinely there as friends of the court or do they seek standing to advocate their own policy position, no matter how tenuous its relationship to the issues might be. We believe that it is up to the governments who are parties to a dispute settlement to include NGO submissions with their government submission, where that is appropriate. International NGOs having direct access to the disputes process, is not supported. A key problem here is that developing countries non-government interests are never likely to be able to put their countervailing views

Term of Reference

- Australia's capacity to undertake WTO advocacy –

Comment –

- Australia's WTO representatives are conscientious, committed and dedicated but over-stretched and under-resourced to do their job properly. The qualifications, number and back up of our Geneva Mission should be increased.

Term of Reference

- Involvement of peak bodies, industry groups and external lawyers in conducting WTO disputes –

Comment –

- In improving our resources at the WTO it is certainly reasonable to devolve more responsibility and costs on to industry NGOs and involve specialised legal counsel in the dispute process. The government's national interest responsibility suggests though that when and how this is done, and to what extent, are matters for judgment primarily by the government on a case by case basis.

Term of Reference

- Relationship between WTO and regional arrangements –

Comment –

- This is quite a big question involving issues of high policy. However, in Australia there is a bipartisan position to emphasise multilateral trade negotiations ahead of seeing the world degenerate into regional trading blocks. In Australia's national interest the ideal outcome is for a strengthened WTO and the global removal of barriers to trade.

Term of Reference

- The relationship between the WTO and other multilateral agreements including those on trade and related matters, and on environmental, human rights and labour standards..

Comment –

- This question is also a big issue. It is best answered not conceptually, but with respect to where particular conflicts are thought to exist, and then answered on specifics. An argument that is often put is the idea of using trade sanctions to impose international standards on countries. To do this through the WTO (if it were thought desirable) would require a consensus agreement by WTO contracting parties. If any of the target countries concerned were a contracting party it would be odd if there were a consensus to proceed. That does not preclude the WTO working in association with other international agencies on labour or environmental standards in order to encourage observance of basic conditions.

Term of Reference

- The extent to which social, cultural and environmental considerations influence WTO priorities and decision making.

Comment –

- The WTO exists to improve living standards through economic growth engendered by opening markets and liberalising trade. Managing the adjustment pressures in national economies because of this process is basically the responsibility of the countries concerned, and in some particular cases, other influential international agencies like the ILO, WHO, UNCTAD, the World Bank, IMF, etc.
- The WTO under the General Agreement on Trade in Services (GATS) recognises the sovereign right of nations to decide for themselves the public/private sector mix in health, education and welfare.
- Labor insists on a cultural exception in trade agreements in order to protect Australian culture and industries that create, promote and broadcast national culture.
- The WTO's preamble commits the organisation to environmental sustainability. Removal of subsidies on fishing, farming and forestry for example, will help end overfishing, overlogging, bring back biodiversity and work towards sustainable agricultural processes.
- The ILO is the body to declare Labor standards and to determine and police their observance. Under its

Singapore Declaration the WTO is committed to promoting Labor standards and avoiding the manipulation of labour standards for the protectionist purposes.

- Because open markets lead to greater economic growth free trade is often referred to as a necessary but not sufficient condition to alleviate poverty in the world. The WTO's role is to open global markets, the international financial institutions and democratic decision making within nations play a role in determining growth with equity issues.

11. A further comment. A key problem for the WTO, but not often referred to in developed countries is the lack of resources developing nations have to service WTO issues. It is often the case in Geneva that a developing country ambassador will be accredited to all the UN institutions while the leading economic powers have specialist accreditation and deep and well resourced WTO bureaucratic back-up. This creates an inequality between nations that works against the poor countries. As the WTO becomes more complex it will work against them further.
12. There is a real need for the developed nations to ensure that developing countries are able to participate in the WTO on an equal footing. This means they must be able to service the necessary negotiations and dispute settling forums.
13. The WTO is beginning to come to grips with this issue – particularly since Seattle, where the breakdown occurred because the developing countries withdrew. Australia should strongly support WTO reforms to ensure an equality of participation and resources.
14. The Committee Bulletin, August 1-15 2000, in reporting your inquiry also said - “The Democrats called for a review of the environmental and social principles behind the operation of the WTO following the Senate Salmon Report”.
15. A key principle of the WTO is that risk assessment on health grounds should be based on sound science. This then avoids health being artificially used as a protectionist device when health is not endangered.
16. A key issue from the Senate Salmon Inquiry is whether the Australian Quarantine and Inspection Service (AQIS) – the body responsible for making risk assessment judgments - did so fully and comprehensively. The Tasmanian Government contends it did not. And that it overlooked issues which, if properly considered, would have lead to a different science based outcome. This criticism of AQIS carries considerable force when considered against the cost cutting and trimming that the AQIS budget has undergone. It leads to the question, “Is AQIS properly

resourced to carry out its national interest responsibility in assessing risks to Australia from foreign imports?”

17. This is not a WTO issue. It decides on the evidence put before it. Like so many criticisms of the WTO it is, in fact, an issue for the nation concerned – in this case Australia – as to whether it properly researched and argued its case.
18. I am available to be examined by the committee if thought necessary.

PETER COOK
28 August 2000